

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 01-0528CCC

1) LUIS B. FORNIA-CASTILLO

Defendant

ORDER

On September 10, 2007, the Clerk of Court reassigned the case of defendant Luis B. Fornia-Castillo to the undersigned for resentencing (docket entry 486) in accordance with the Court of Appeals' Judgment dated August 28, 2007(docket entry 485). It now appears that a Motion to Dismiss Indictment for Abuse of Grand Jury and Prosecutorial Misconduct filed by defendant Fornia-Castillo pro se on October 22, 2003 (**docket entry 424**) was never disposed by the judge to whom his case was previously assigned. Said motion was filed after defendant was convicted and sentenced for the first time, and while his first appeal was pending before the Court of Appeals.¹

Defendant's motion is clearly without merit, as it was untimely filed after he self-convicted and was originally sentenced in this case, see Fed.R.Crim.P. 12(b)(3), and, in any event, was also waived by his guilty plea. See United States v. Fornia-Castillo, 408 F.3d 52, 56, n. 1 (1st Cir. 2005). Accordingly, it is DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on November 30, 2007.

CARMEN CONSUELO CEREZO
United States District Judge

¹ That appeal resulted in the affirmance of his convictions and in a first remand for resentencing. See docket entry 436. The case was reassigned to the undersigned following a second appeal and a second remand for resentencing.